



July 23, 2001

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2001-3187

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149726.

The Department of Public Safety (the "department") received a request for 1) the personnel file of a specific former department trooper, 2) any and all records and reports regarding disciplinary hearings held in reference to the former trooper, and 3) a copy of the department's General Manual. You inform us that the department is prepared to release all of the "relevant" information in the department's possession, with the exception of certain personnel file information. We assume you to mean that, with the exception of the information you have submitted to this office, the department has made a good faith effort to relate this request for information to information the department holds, and that the department has released all such information to the requestor. Gov't Code §§ 552.301, .302; *see* Open Records Decision No. 561 at 8 (1990). You claim that portions of the requested information are excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you claim that the information in Exhibit B is excepted from disclosure under section 552.101 of the Government Code and common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 thus encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under common law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is generally excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Because Exhibit B is a report of personal financial information not relating to any transactions between the trooper and the department, we agree that the exhibit must be withheld in its entirety under section 552.101 in conjunction with the individual's common law right to privacy.

Next, you assert that the information which you have highlighted in Exhibit C is excepted from disclosure under section 552.101 in conjunction with chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Based upon your arguments and a review of Exhibit C, we agree that the highlighted information must be withheld under section 552.101.

Exhibit A contains an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the Form I-9 is confidential under title 8, section 1324a of the United States Code, and must therefore be withheld from disclosure in its entirety under section 552.101.

You have highlighted information in Exhibit A which contains a Texas driver's license number. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The department must withhold the Texas driver's license number under section 552.130(a)(1). *See also* Open Records Letter No. 2001-2047 (2001) (granting department previous determination for certain categories of information subject to section 552.130). We have marked the information that must be withheld under section 552.130.

You also assert that the information in Exhibit C contains educational records protected by sections 552.026 and 552.114. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

It appears that you are invoking the protection of the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). FERPA provides that no federal funds will be made available under any applicable program to *an educational agency or institution* that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are *maintained by an educational agency or institution* or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Because the department is not an educational agency or institution, sections 552.026 and 552.114 and FERPA are inapplicable. *See* Open Record Decision No. 390 (1983). The information must therefore be released, but with the possible redaction of information that may be excepted from disclosure under section 552.117 or 552.101, as we will discuss below.

Exhibits A, C, and D contain information which may be excepted from disclosure under section 552.117 of the Government Code. You have redacted information from Exhibits A and D prior to their submission to this office, and you inform us that the department made the redactions based on section 552.117(2). Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(1). Section 552.117(2) excepts from disclosure the current or former home address or home telephone number, social security number, and family information of a peace officer, regardless of whether the officer elected confidentiality under section 552.024.<sup>1</sup> *See* Gov't Code § 552.117(2); Open Records Decision No. 622 (1994). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). This office has concluded that a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any peace officer pursuant to section 552.117(2) of the Government Code, without first requesting a decision from this office. *See* Open Records Decision No. 670 (2001). We assume you redacted the information from the above-referenced exhibits in accordance with our previous determination. *See id.* While we agree that the department must withhold the redacted information, we conclude that based upon section 552.117(2), the department must withhold additional information which we have marked.

In summary, the department must withhold Exhibit B from disclosure in its entirety under section 552.101 of the Government Code in conjunction with common law privacy. The department must also withhold the highlighted information in Exhibit C under section 552.101. In Exhibit A, the department must withhold the marked driver's license information under section 552.130, and must also withhold the Form I-9 under section 552.101 in conjunction with title 8, section 1324a of the United States Code. The information which we have marked in Exhibits A and D, together with the information the department has redacted pursuant to section 552.117(2), must be withheld under that section. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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<sup>1</sup>For the purposes of section 552.117(2), peace officers are defined by article 2.12 of the Code of Criminal Procedure.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

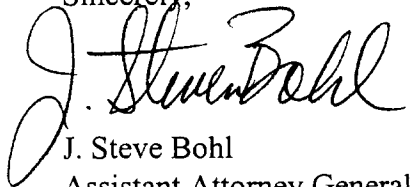
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

  
J. Steve Bohl  
Assistant Attorney General  
Open Records Division

JSB/sdk

Ref.: ID# 149726

Enc.: Marked documents

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(w/o enclosures)